







# **The Doha Development Agenda**

## **Turning Vision into Reality**

**National Foreign Trade Council, Inc.**

**Updated Recommendations for the  
Doha Development Agenda**

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National Foreign Trade Council, Inc.  
1625 K Street, N.W. Washington D.C. 20006-1604  
Tel: (202) 887-0278 Fax: (202) 452-8160  
[www.nftc.org](http://www.nftc.org)

**The National Foreign Trade Council** advocates an open, rules-based world economy. Founded in 1914 by a group of American companies that supported an open world trading system, the NFTC now serves nearly 300 member companies through its offices in Washington and New York. The NFTC represents its member companies on trade and investment, export finance, economic sanctions and international tax policies that affect the competitiveness of U.S. companies overseas. It supports open markets, opposes unilateral sanction restrictions on trade, and assures U.S. business access to needed risk insurance and export and project finance.

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# National Foreign Trade Council

## Updated Recommendations for the Doha Development Agenda

### I. INTRODUCTION

In 2002, the National Foreign Trade Council (NFTC) issued a comprehensive set of bold proposals and recommendations for the Doha Development Agenda (the Doha Agenda) centered on achieving ambitious multilateral trade liberalization and improved rules. The overriding rationale behind the recommendations was to seize hold of the economic and developmental promise of greater global trade liberalization, and, in turn, effectively address the systemic challenges of proliferating preferential trade agreements and the rapid pace of globalization. In 2005, these challenges remain before the global trading system as WTO Members prepare for the 6<sup>th</sup> Ministerial Conference in Hong Kong and attempt to make important headway in all major areas of the negotiation.

The NFTC and its 300 members continue to believe that the only outcome worth aiming for in the Doha negotiations is an ambitious one. The Doha Agenda presents an enormous opportunity to revitalize and strengthen the global trading system, and to raise living standards and health around the world by creating a more prosperous global economy that brings widespread benefits through increased economic growth. Trade liberalization and improved trade governance are central to advancing growth and development.

***NFTC calls upon WTO Members to achieve bold results in the Doha Agenda in response to the twin challenges of globalization and preferential trade agreements.***

The WTO is at a critical juncture and turning point. It has been almost 20 years since the last GATT/WTO round of trade talks – the Uruguay Round – was launched. While the WTO trade negotiations move forward at a relatively slow pace, preferential trade agreement negotiations and globalization move forward rapidly. The NFTC continues to firmly believe that an ambitious outcome to the Doha Agenda will bolster the WTO's credibility and relevance as the bedrock foundation of an expanding global economy and peaceful global economic cooperation.

The recent report by the Consultative Board to the Director-General Supachai Panitchpakdi (the Sutherland Report) emphasized the risks faced by the global trading system absent bold action by WTO Members. It highlighted that one of the hallmarks of the WTO – non-discriminatory treatment under the most-favored-nation (MFN) principle – is today more the exception than the rule due to preferential trade agreements (PTAs) that continue to proliferate regionally worldwide. Some 300 PTAs have been notified to the WTO as of October 2004, which is creating more complexity in the trading system due to the range of different rules and tariffs. The European Union, for example, has MFN tariff rates with only nine trading partners.

The Sutherland Report underscores a fundamental point about the WTO and trade liberalization; namely, that trade liberalization and rules-based trade **are** about development and integration into the global economy. As the report states:

Membership in the WTO is recognition by governments that more open and investment friendly domestic markets create trade and generate development. Of more practical importance is that WTO membership is intended to place on governments – all governments – pressure to move them towards, not away from, competitive trade regimes.

The NFTC commends the progress made in July 2004 to achieve a framework agreement on the major areas of the negotiation, particularly on agriculture. The framework package achieved important and necessary progress in the negotiations. As we recognize the 10<sup>th</sup> anniversary of the WTO, it is critically important that 2005 be a year of major breakthrough for the Doha Agenda in setting forth the detailed parameters for the final stage of the negotiations on the four critical components of the Doha Agenda – agriculture, non-agriculture market access (NAMA), services and rules.

#### **A. WIN-WIN OUTCOMES AND LINKAGES ARE KEY TO SUCCESS**

In 2002, the NFTC issued a 10-point vision for the Doha Agenda as a way to ensure the WTO continues to serve as the foundation of the global trading system. The NFTC vision (see below) called on WTO Members to achieve sweeping liberalization of trade in goods, services and agriculture, and to improve rules in important areas such as trade facilitation. It also called for the effective integration of developing countries into the global trading system to enable these economies to benefit fully from the potential gains from open, rules-based trade. The 2002 vision is still relevant to the Doha Agenda negotiations.

The NFTC vision was based on recognition that all WTO Members have important issues to address in the negotiations and only through a bold outcome across-the-board would any one member be able to achieve success on their individual priority issues. Each area of the negotiation is linked together. Each member of the WTO has politically sensitive issues. The only way forward to a successful conclusion of the Doha Agenda is through “win-win” outcomes in all major areas of the negotiation. For the United States, ambitious liberalization of the US agriculture market and addressing other sensitive areas will only be possible if substantial and meaningful market access is achieved for American goods, services and agriculture in other markets, particularly in emerging and middle income developing country markets.



#### ***NFTC's 2002 Vision for the Doha Agenda***

- 1. Progressively eliminate tariffs on industrial goods by 2020.***
- 2. Eliminate or minimize tariffs on agriculture commodities and finished food products, and eliminate trade distorting agricultural subsidies and supports by a date certain.***
- 3. Achieve broad services market liberalization covering all sectors and include new sectors such as energy services.***
- 4. Pursue measures to eliminate existing and prevent new non-tariff barriers to trade.***
- 5. Eliminate tariffs on the products of least developed economies before 2005.***
- 6. Provide focused & meaningful technical assistance to developing economies.***
- 7. Achieve greater differentiation among economies for special & differential treatment.***
- 8. Adopt effective rules on trade facilitation and transparency in government procurement.***
- 9. Reform WTO rules on antidumping and subsidies and countervailing duty measures.***
- 10. Implement agreed WTO commitments and improve WTO dispute settlement rules.***



Both developed and developing economies have a stake in embracing deep and meaningful market access liberalization, and people in all WTO Members stand to benefit from a bold approach. The NFTC, in representing American businesses across all sectors of the economy, supports tackling sensitive U.S. measures and trade restrictions, including high tariffs, agriculture trade restrictions and rules. We also continue to endorse immediate duty and quota free treatment for least developed countries (LDCs). In return, and to ensure US political support for major trade liberalization of the US market, the NFTC calls for similar action on the part of all other WTO Members. American businesses continue to face substantial trade barriers worldwide and cannot support eliminating U.S. trade barriers without reciprocal action by other WTO Members. The Doha Agenda presents a critical opportunity to achieve this win-win outcome for all WTO members.

## **B. GLOBALIZATION HAS CREATED A NEW PARADIGM FOR TRADE LIBERALIZATION AND IMPROVED TRADE GOVERNANCE**

The GATT and WTO have played a vital role in helping economies benefit from globalization. By establishing open and rules-based trade, the WTO has helped generate decades of trade growth and improved trade governance. Since World War II, this has led to growing prosperity, rising living standards and alleviation of poverty. According to a University of Michigan study, elimination of persistent barriers to trade in services, goods, and agriculture could generate \$1.8 trillion in additional global welfare. According to the Center for Global Development, a successful Doha Agenda could lift 500 million people out of poverty and generate \$200 billion annually to developing economies.

While the WTO is one way to address the challenges of globalization, the WTO is not a panacea. It cannot solve many of the deep-seated challenges confronting economies and the global commons. The WTO cannot, for example, build the necessary infrastructure of a well-functioning economy, such as transportation, healthcare, education, social safety nets, and other essential components of a vibrant economy. Reforms undertaken outside the purview of the WTO are critical to realizing many of the benefits of trade liberalization. The World Bank and other multilateral institutions, as well as bilateral assistance programs, can and do bear responsibility in helping developing countries address the manifold challenges of moving a developing economy in the direction of a fully industrialized, growing economy.

***“[M]ore open and investment friendly domestic markets create trade and generate development.”***  
***-- The Sutherland Report***

At its inception, 11 of the 23 founding members of the GATT were developing countries. Today, two-thirds of the WTO’s 148 members are developing countries. A challenge before the WTO and before many developing economies is to advance the Doha Agenda in a manner that recognizes that all WTO members have a stake in being full participants in the multilateral trading system.

The evidence is overwhelming that those economies that participate openly in the global economy grow and develop more quickly. According to the World Bank, for example, developing country “globalizers” grew three and one-half times faster than developing country “non-globalizers”. As UN General Secretary Kofi Annan has stated, “(t)he poor are poor not because of too much globalization, but because of too little.”

***“The poor are poor not because of too much globalization, but because of too little.”***

***--Kofi Annan, UN Secretary General***

To attract foreign direct investment today, open markets and transparent and rules-based trade governance are essential. The pattern of trade is changing and it is increasingly about global supply networks where any given product is manufactured in an integrated fashion based on inputs from around the world. Maintaining high tariff walls or non-transparent rules create more costly and risky investment climates, which deter competitiveness and direct investment from the private sector. A driving reason for the proliferation of regional free trade agreements is, in fact, to attract a virtuous cycle of private sector investment and economic activity by removing trade barriers and embracing improved and transparent trade governance. As the recent Sutherland Report emphasizes:

[T]he WTO only makes sense if its rules and negotiations lead firms across the world making decisions to trade and invest. There is little other practical output: all the growth, development, employment, social and other benefits that can stem from trade, all depend on individuals or undertakings participating in a global economy. It is not governments that create wealth but global firms, small and medium-sized enterprises and individuals participating in markets . . . .

## **II. RECOMMENDATIONS AND POSITIONS ON MAJOR ISSUES**

### **A. DEVELOPING COUNTRIES AS VESTED PARTICIPANTS IN THE GLOBAL TRADING SYSTEM**

The NFTC applauds the long overdue attention to trade-related technical assistance and capacity building needs of developing economies. The Integrated Framework (IF) and the numerous and substantial bilateral programs now in place are critical to helping developing countries implement current and future WTO obligations and mainstream trade into developing country economic policies.

To the extent possible, capacity building measures should be demand-driven programs with appropriate measurements of results so that developing country participants have some responsibility for making the best use of such assistance and being specific about their trade-related capacity needs. The Trade Policy Review Mechanism should issue an annual accounting of the results and requested for assistance. Both donors and recipients should be responsible in ensuring the ultimate effectiveness of technical and capacity building assistance.

A troubling development in the Doha negotiations has been a predominant focus of many developing countries on the issue of special and differential treatment (S&D). While the NFTC supports providing S&D where warranted in line with the DDA mandate, it should be tailored in a way that enables developing countries to ultimately benefit from trade liberalization and fuller integration into the global economy as a result of the Doha Agenda negotiations. Longer phase in of commitments and other transitional provisions are better approaches than exemptions from obligations.

***For the Doha Agenda to succeed, middle income developing countries must participate meaningfully in opening their own markets.***

Above all, for the Doha Agenda to succeed, middle income developing countries must participate substantially and meaningfully in opening their markets. In furtherance of that objective, the NFTC believes it is both timely and appropriate to give serious consideration to putting in place mechanisms for graduating developing countries from S&D. The experience of several

developing countries is clear -- effective integration of developing economies into the global trading system is a proven path towards economic growth and development. S&D should not become an excuse to keep harmful trade restrictions in place or adopt new restrictions, especially among middle income countries.



### ***Recommendations on Technical Assistance and Special Treatment***

- 1. Assistance should be targeted to WTO commitments and WTO negotiating capacity. Advice on developing sound taxation systems to replace revenues previously derived from tariffs and building institutional capacity on intellectual property rights and customs modernization are examples where assistance is needed.***
- 2. Special and differential treatment should generally be granted through longer phasing-in of commitments, not through lesser commitments.***
- 3. Some process for "graduating" countries from S&D treatment should be developed. Countries belonging to the OECD should automatically be graduated.***
- 4. Middle income developing countries must be fuller participants in opening their own markets, while allowing least developing countries the greatest flexibility to adjust.***

The NFTC continues to believe that the WTO, like its sister organization the World Bank, should distinguish among developing economies. It should encourage developing economies, particularly middle income developing economies, to become fuller participants in the global trading system and gain all the economic benefits that result from such participation. S&D should be limited to those countries that truly need it, which often is a small enough share of trade to prevent significant trade distortions.

There are several ways to develop criteria for "graduating" countries from S&D status, such as levels of income and indebtedness. Absent S&D differentiation, fundamental principles of the WTO, such as non-discrimination and most-favored-nation treatment, will continue to be seriously undermined. This would create a trading system that perpetuates poverty and despair by failing to encourage developing nations to move toward more open and transparent rules-based trade as a vehicle for sound economic development and growth.

Another troubling development in the Doha negotiations has been a growing emphasis of less developed countries on preferential tariff arrangements. For many reasons highlighted in greater detail below, emphasis on preferential tariff erosion is misguided and potentially harmful. More importantly, it violates a major precept of the so-called 1979 Enabling Clause – which provides the authority to derogate from non-discriminatory treatment for developing countries through GSP and other arrangements – namely, that special and preferential treatment programs “shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favored-nation basis.”

***The GATT 1979  
Enabling Clause allows  
discriminatory treatment  
for developing countries  
as long as it does not  
impede broader MFN  
trade liberalization.***

## **B. MARKET ACCESS FOR INDUSTRIAL GOODS**

**1. Completing the Unfinished Business of the GATT** - In 2001, the NFTC issued a bold proposal calling for the progressive elimination of all industrial tariffs in all WTO Members as a centerpiece objective of the Doha Agenda negotiations. While we recognize the July Framework text on NAMA is less ambitious, we strongly re-affirm that call to action as the ultimate end objective and urge that this goal guide WTO members in achieving an ambitious set of modalities on the four components of the NAMA text – a non-linear formula; sectoral initiatives on a critical mass basis to achieve zero tariffs; tackling non-tariff barriers; and providing flexibility for developing countries.

There are several compelling reasons why industrial tariff elimination in the WTO should be achieved:

• **Industrial Tariffs are Still a Problem:** According to a World Bank study, industrial tariffs impose an annual cost of \$190 billion on the world economy each year. Industrial goods account for about two-thirds of annual total world tariff payments, with agricultural products and minerals making up the rest. This extraordinarily high tax on world commerce is not just the result of high tariff rates in certain countries. For while *tariff rates* in developed countries are relatively low, the sheer volume of trade among such countries results in large amounts of *tariff payments* on routine flows of materials between production facilities in the developed nations. Indeed, some \$16 billion is paid every year in tariffs on North-North trade. Very often, the tariff rates on such trade are too low to serve any protective purpose, and indeed production of like goods often exists in both exporting and importing nations. These "residual" tariffs left over from the Uruguay Round do little other than impose an enormous tax on trade that is ultimately passed on to consumers.

*Industrial tariffs cost the world economy \$190 billion per year.*

• **The Growing Importance of South-South Trade:** About 40% of developing country exports are sent to other developing countries, and this percentage is increasing rapidly. According to the World Bank, South-South trade will soon account for more than 50% of developing country exports. Some 75% of these exports are industrial products.

*70% of the tariffs paid by developing countries are paid to other developing countries.*

• **Developing Countries Pay Most of Their Tariffs to Each Other:** Developing countries bear a disproportionate burden of world tariff payments on industrial goods. Indeed, developing countries pay 40% of the annual world tariff bill on industrial goods, even though they only account for about 22% of world GDP. Protectionist tariff "peaks" in developed countries are partly responsible for this, but they do not explain the whole problem. In fact, an exclusive focus on "peaks" ignores a much more serious issue: 70% of the tariffs paid by developing countries (\$57 billion annually) are paid to *other developing countries*. This is a result of two factors: the rapid growth in South-South trade, and very high tariff rates in developing countries. As South-South trade continues to grow, this problem will be exacerbated.

• **High Tariffs in Developed Countries:** Much has been written about tariff "peaks" in developed countries, and indeed developing-country products face tariffs in rich economies that are about four times higher than the tariffs imposed on North-North trade. This is because of high tariff rates on imported clothing, footwear and textiles in developed countries. While there is no question that such protectionism hurts the poor in producer countries, it is not

well known that such tariffs also disproportionately hurt poor *consumers* in developed economies. In the United States, half of all collected tariff revenue comes from just two basic necessities: clothing and shoes. While these two products account for less than 7% of U.S. imports by value, they account for fully 47% of U.S. tariffs collected. The Progressive Policy Institute has shown that U.S. tariffs tend to be skewed against poor consumers, with luxury imports often duty-free and everyday goods highly taxed. Single mothers with young children--who spend more of their income on clothing than any other type of family in the United States--are the hardest hit.

***Tariff "peaks" in rich countries hurt poor consumers at home, as well as producers in poorer countries.***

- **High and Escalating Tariffs Hurt Developing-Country Competitiveness:**

The key to economic growth in developing countries is attracting foreign investment. Such investment is typically geared toward producing goods for export, and therefore an important factor in investment decisions is the local cost of component materials and intermediates. Because of high tariff rates, developing countries pay more for intermediate goods per dollar of manufactured output, making their production costs higher and their economies less competitive. Tariffs on intermediates account for 14.4% of manufacturing costs in developing countries, versus 9% in developed countries. This is part of the reason why most foreign investment goes to *other developed countries*, rather than to developing economies. It is for this reason that many developing countries recognize the importance of reducing their own tariffs. At the same time, tariff escalation in developed countries can distort trade in ways unfavorable to developing countries.

***Nearly half of all world trade is already duty-free. But the spread of FTAs may leave poor countries behind.***

- **Reliance on Tariffs for Revenue is Counterproductive to Sound Economic Development:**

The call for elimination of industrial tariffs underscores the vital importance of reforming domestic tax systems alongside trade liberalization to ensure that adequate levels of revenue in poor countries which may rely heavily on import tariffs as a source of government revenue. Reliance on trade taxes for revenue is not an optimal policy. It prevents countries from securing the benefits of trade liberalization and tends to discourage foreign investment. Best practices among developing countries that have reduced or eliminated their tariffs call for parallel policies of reforming tax regimes to rely more heavily on income and broad-based sales taxes.

Trade reform need not entail diminished revenue. As we have seen in countries that have recently acceded to the WTO, those that reduce tariffs have had greater tariff collection at the border and have successfully eliminated fraudulent activities to avoid tariffs. In the 1990s, for example, Ghana, Kenya, Senegal and Malawi all implemented trade reform without significant loss in government revenue as a percentage of GDP. And Cambodia introduced broad-based consumption taxes that reduced dependence on customs duties. The NFTC supports targeted technical assistance to help developing countries improve their domestic tax regimes and tax-collection systems in parallel with the phased elimination of industrial tariffs.

- **We're Already Halfway There:** The WTO estimates that 55% of world trade is *already duty-free*, under one of more than 300 notified preferential free trade agreements. With the completion of several major FTAs presently under negotiation, this figure will grow significantly. Yet the rapid proliferation of FTAs threatens to ensnare world trade in a spider's web of conflicting agreements, complex rules of origin, and a distortion of comparative advantage. Most ominously, the proliferation of FTAs threatens to leave the poorest nations



behind, locked out of the benefits of preferential trade deals because of their small markets, a lack of negotiating leverage, or simple accidents of geography.

• **Overriding Concerns over Tariff Preference Erosion are Counterproductive and Contrary to the GATT 1979 Enabling Clause:** A big stumbling block to greater multilateral tariff liberalization has been developing country concerns over losing special tariff preferences under GSP and other special trade regimes. These concerns are counterproductive. Preferential tariff regimes are usually temporary, subject to complicated rules and special exemptions, and have generated relatively small levels of benefit to the beneficiary countries. Preferential agreements are also less meaningful as a growing number of countries negotiate duty free trade agreements regionally. Moreover, the key GATT/WTO obligation allowing discriminatory trade preference schemes – the so-called 1979 Enabling Clause – allows these preferences only as long as they do not “constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favored-nation basis.”



### ***Industrial Tariffs: Why Zero Makes Sense***

- 1. Developing countries pay most of their tariffs to each other, face high and escalating tariff "peaks" in developed markets, and need to reduce costs of production to attract foreign investment.***
- 2. Developed countries need to reduce the \$16 billion they pay annually on North-North trade due to "residual" tariffs, and need increased access to developing markets.***
- 3. 55% of world trade is already covered by a zero-duty agreement. But increasing regionalism threatens more complexity and cost, and may leave poor countries behind.***
- 4. Comprehensive tariff elimination is a grand political bargain, and offers the greatest hope of overcoming protectionist resistance in both developed and developing nations.***

**2. NFTC Tariff Analysis Demonstrates Need for Ambitious Non-Linear Formula and Zero Tariff Initiatives:** The NFTC recently commissioned a tariff analysis that examined two issues: 1) tariff rates and trade levels for 50 priority US exports of NFTC member companies to five developing country markets; and 2) tariff rates and trade levels for five top manufactured exports of the same five major developing countries. The US exports selected involved a range of products, including consumer goods, chemicals, pharmaceuticals, construction equipment, electronic products and medical devices. The five countries selected were: Brazil, Egypt, India, Malaysia and South Africa (Intra-Five Developing Countries).

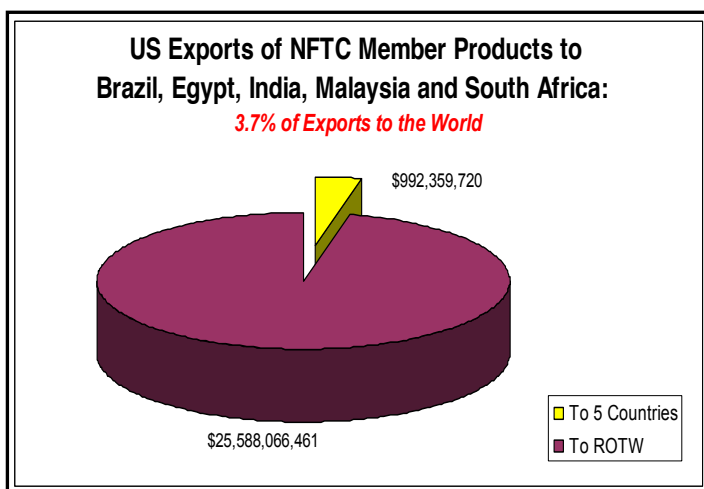
The NFTC findings demonstrate that ambitious cuts in bound rates among middle income countries through a non-linear formula and commitment to eliminate tariffs on key sectors are necessary for firms in both the United States and in developing countries to achieve new market access for their leading exports. The data involving this sample group of exports and countries show substantial disparities between bound and applied rates for leading exports, and suggests that significant opportunities exist for growth in trade among the Intra-Five and between the US and Intra-Five if tariff barriers are reduced.

The first part of the tariff analysis involving 50 leading US exports to the Intra-Five developing countries reveal what is at stake in the NAMA negotiations for US business in achieving greater market access to major developing country markets. The chief findings of the analysis are as follows:

- **US Exports of 50 Priority Products to Intra-Five Developing Countries are Limited:** In 2003, NFTC member companies exported more than \$26.5 billion to the world of the selected priority products. Of that trade, NFTC member companies exported \$992 million -- only 3.7% -- to Brazil, Egypt, India, Malaysia and South Africa. US exports are small relative to the potential of these important growing markets.

- **US Exporters Face Uncertainty in Trade with Intra-Five Countries due to High Bound or Unbound Tariffs:** In this analysis, more than \$692 million of the NFTC priority exports face the possibility of uncertain or prohibitive tariffs in Brazil, Egypt, India, Malaysia and South Africa. In other words, about 70% of these US exports are potentially exposed to the risk of duties increasing to 20% or higher due to high bound or unbound rates, which could significantly impact US exports to these developing countries. Depending on the country, 20-45% of product lines are unbound, and one-third to nearly all bound rates are bound at 20% or higher.

- **US Exporters Face High Applied Tariff Rates in Intra-Five Developing Countries:** More than one-third of the sample products are subject to applied rates of 20% or greater. Nearly two-thirds of the 50 priority product tariffs – totaling \$636 million – are subject to high tariffs of 10% or more in the Intra-Five countries. In most cases, tariffs on the same manufactured products imported into the United States are duty-free.



- **An Ambitious Tariff-Cutting Formula and Tariff Elimination Initiatives are Critical to Future Growth in US exports to Major Developing Country Markets:** The wide disparity between bound and applied rates reveals the extent of tariff cuts necessary in order to make a difference in applied rates, and therefore impact US exporters' ability to increase access in these key markets. The results are

striking given the very large gap between bound and applied rates on the diverse sample of products important to NFTC members. If the formula for the NAMA tariff reductions were to be less than **75%** off the bound rate, there would likely be no benefit of tariff liberalization on **\$626 million - more than 60%** -- of US exports from NFTC members into these five important and growing markets.

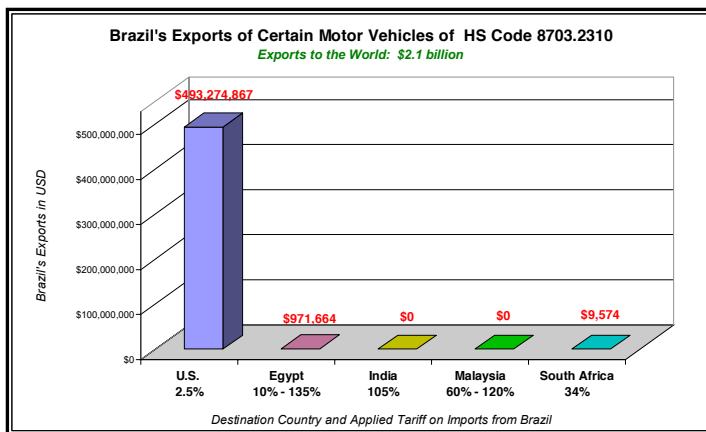
The second part of the tariff analysis examined South-South trade among Brazil, Egypt, India, Malaysia and South Africa of their respective top five manufactured exports. The major findings of the analysis were as follows:

- **Applied Duties as High as 160% Are Contributing to Limited Trade among the Intra-Five Countries:** While Brazil, Egypt, India, Malaysia and South Africa exported more than \$36.5 billion to the world of their five top non-agriculture manufactured

products, these five leading industrializing countries exported only 1% -- valued at \$361 million -- to each other.

- **Intra-Five Developing Country Trade with Regional FTA Partners is Much Higher Due in Part to Low Tariffs:** Exports of the same top five products from the five countries to one FTA partner where lower duties exist totaled \$1.3 billion – more than three and half times the amount of Intra-Five trade. Given the size of the five industrialized-developing countries, significant opportunities exist for growth among them and could be capitalized on if tariff barriers are reduced.

- **High Bound and Unbound Tariffs on Intra-Five Top Exports Create Uncertainty for Importers and Exporters:** Almost 70% of tariff lines included in the Intra-Five trade analysis totaling over \$113 million face the possibility of unstable or potentially prohibitive tariffs among each other that could hinder future export and investment opportunities.



- **Ambitious Cuts in Bound Rates are Necessary for Real Market Access Opportunities for Top Exports among the Intra-Five Countries:** The tariff differential between bound and applied tariff rates in the Intra-Five countries reveals the extent of the tariff cuts necessary in the NAMA negotiations in order to make a difference in the applied rates, and therefore impact the ability of the five industrialized developing countries to increase access in each

other's markets. If a formula for the NAMA tariff reductions were to be set at a level less than 50% off the bound rate, more than half of the sample's applied tariffs would not likely be reduced at all. In other words, exports from Brazil, Egypt, India, Malaysia and South Africa totaling more than \$137 million – or 45% of the bound trade analyzed – could potentially lose out on any growth opportunities in each others' markets.

**3. Substantial Progress on Non-Tariff Barriers is Essential Component of NAMA Negotiations** – In addition to eliminating tariffs, there should be no question that tariff elimination must be accompanied by aggressive elimination of non-tariff barriers. Indeed, in many industrial sectors, such as the automobile sector, tackling non-tariff measures is necessary if the benefits of tariff liberalization are to be realized. Lack of market access is often related to the erection of disguised barriers to trade and investment. The Doha Agenda negotiations must address the increasing use of non-tariff barriers in the following ways:

- **Compliance with Existing WTO Agreements:** WTO Members should recommit to ensuring compliance under existing WTO agreements and provisions addressing non-tariff barriers, including the Agreements on Technical Barriers to Trade (TBT), Sanitary and Phyto-

*NFTC is concerned about the growing use of technical standards, SPS rules, and regulations as non-tariff barriers to trade.*



Sanitary Measures (SPS), Import Licensing Procedures, Trade-Related Investment Measures (TRIMs), Customs Valuation, and Rules of Origin. The NFTA is concerned about the growing use of technical standards, non-science-based sanitary and phytosanitary rules, and the lack of regulatory transparency as ways to block trade. Ensuring effective implementation of existing agreements and commitments is an essential component of a well-functioning multilateral trading system.

• **Improvement and Clarification of Rules and Commitments, including securing a horizontal agreement to improve regulatory transparency to affected stakeholders:** Several steps should be taken to improve existing rules and adopt new commitments to eliminate specific non-tariff barriers to trade. These should include rules to address the lack of regulatory transparency, the lack of access to distribution networks, and trade-distorting tax policies. These non-tariff barriers have been particularly prevalent in important industrial sectors such as autos and consumer goods. Some issues to focus on include:

► **Discriminatory excise and sales taxes:** Discriminatory excise and sales taxes (in excess of VAT and other traditional tax regimes) are a major impediment to market access and penalize globally recognized U.S.-branded products in several developing countries. These taxes depress consumer demand, distort trade, impede new investments, and unfairly single out global companies and their local partners. These discriminatory taxes affect thousands of local workers, distributors and suppliers who depend on the industry to survive. They also impact a number of other U.S.-trade related activities, including the flow of goods, investment, distribution and retail services and, most importantly, the strength of U.S. trademarks.

These discriminatory taxes affect the two leading U.S. soft drink players in several ways. In India, for example, carbonated soft drinks face a 32% excise tax, whereas other substitutable beverages are subject to only an 8% tax. And in several other countries, like Egypt, soft drinks are penalized at “sin tax” levels (28-30%), while competing beverages are exempt from taxes.

In addition, in the beverage alcohol sector, many countries maintain internal excise tax systems that have the effect of imposing higher tax rates on imported spirits than on the domestic product, consequently providing protection to the domestic industry and undermining the competitiveness of US branded goods. For example, Colombia applies a tax rate of Col\$200 per degree of alcohol for spirits with an alcohol content of 15-35% and a rate of Col\$301 for products bottled at greater than 35%. The overwhelming majority of local product is bottled at 35%, while by law, US spirits are bottled at not less than 40% alcohol by volume. Other countries have similar discriminatory tax practices which are arbitrary, non-transparent and provide protection to domestic industry.

► **Labeling Schemes and Conformity Assessment:** Labeling schemes which lack sound scientific or consumer protection criteria are of growing concern as a trade barrier. The Committee on Technical Barriers to Trade should bring greater clarity to the harmful effects of these labeling schemes, including the costs of such schemes to developing economies. A greater TBT focus on labeling schemes should consider whether new rules-based disciplines are needed in this area.

Another area of potential improvement to TBT rules includes expediting onerous conformity assessment procedures through the adoption of the principle of “one standard,

one test, supplier's declaration of conformity" or through common dossier procedures. Harmonization of industrial standards and certification processes are particularly important to the automotive and aerospace sectors.

► **Trade Facilitation Agreement:** The NFTC is very supportive of an agreement on trade facilitation which will address some of the more prevalent non-tariff measures at the border. Additional NFTC comments in this important topic are included below in the section on Rules.

### **C. SERVICES: A VITAL AND INTEGRAL PART OF THE DOHA ROUND**

**1. Urgent Focus Is Needed to Improve the Quality and Quantity of Market Access Offers** -- A central aim of the Doha Agenda should be to achieve a progressively higher level of liberalization and market access on services. While the Uruguay Round basically resulted in a binding of the current level of services regulation, the Doha Agenda must aim for genuine services market liberalization by expanding national treatment and market access obligations to cover all services and modes of supply, and by increasing the sectoral coverage of specific commitments. For the Doha Agenda to succeed, liberalization of services must be a cornerstone.

The NFTC calls on WTO Members to give urgent focus to an ambitious outcome on services by increasing the quantity and quality of market access offers. An ambitious outcome on services is critical to achieving a similar major outcome on agriculture and industrial goods, and is in the best interests of all WTO Members. Services are a growing and important component of economic growth. Services stimulate the efficiency of domestic service industries and facilitate trade in goods and there is widespread agreement on the benefits of services trade liberalization.

*Urgent focus is needed to enhance the quality and quantity of market access offers on services.*

Developing countries have an important stake in the outcome of this negotiation. As underscored in a recent WTO submission by the European Union, 25 of the leading 40 global exporters of services are developing countries. According to the World Development Indicators Database, in 2001, 45% of low income and 57% of middle income countries' GDP was attributable to services.



#### ***NFTC Recommendations on Services***

- 1. Give urgent attention to ensuring ambitious market access results in services.***
- 2. Pursue horizontal and transparency in domestic regulation commitments.***
- 3. Include energy services in the negotiations, seeking to reduce limits on market access. In addition, seek to address discriminatory regulatory systems through a pro-competitive regulatory reference paper on energy services, as was used in the basic telecom agreement.***
- 4. Recognize importance of reasonable GATS Mode 4 reforms in promoting global trade in services and economic competitiveness and growth.***

It is essential that the services negotiations increase market access and national treatment commitments across all sectors, including commitments to:

- Protect acquired rights and provide for new business opportunities;
- Ensure rights of establishment and ownership for foreign investors through wholly-owned entities (including direct branches of foreign parents) or other business structures; and
- Eliminate unnecessary restrictions on cross-border transactions.

**2. Improved Rules Should Include Greater Transparency of Domestic Regulation** -- Trade in services is conceptually very different than merchandise trade. Whereas the focus of more than 50 years of GATT liberalization has been on border measures, the nature of services is such that border measures virtually do not exist. From the outset, liberalizing trade in services inevitably involves obligations on the domestic regulation of services. Thus, the focus of future negotiations must involve detailed discussions on the way in which service industries are regulated under WTO Members' domestic economic policies.

That said, the NFTC believes it is crucial to note that the purpose of negotiations on services is to avoid domestic regulation that is more trade restrictive than necessary. It is important to recall that GATS does not place restrictions on a Members' right to regulate its own service sectors, unless the country has itself chosen to accept such obligations.

The NFTC supports the adoption of "horizontal commitments" which would bring some of the advantages of a "negative listing" approach to GATS. The benefits of such an approach would reinforce and magnify liberalization commitments across service sectors. More specifically, the NFTC encourages WTO members to promote pro-competitive regulatory reform through the promulgation of adequate, fair, consistent and transparent rules and regulations. In establishing transparent, impartial regulatory administrative processes, focus should be placed on: a) the public publication of texts of proposed and existing regulations, including substantive rules of general applicability, policies and interpretations of rules and regulations; and b) institution of due process for the making of rules and regulations, including provision of specific timeframes for public comments, and objective, market-related licensing criteria with specific timeframes within which applicants must receive notification of approval or denial of a license, and in the event of denial, reasons for the same.

Applying principles of transparency in domestic regulation, including prior public consultations on new regulatory rules, will result in more effective regulation. This is an area that deserves targeted technical assistance, which the NFTC fully supports.

**3. Including Energy Services** -- All nations and all economic activity depend on the production of clean, reliable energy that is efficiently produced and reasonably priced. An important component of the production of energy is the energy services industry. The NFTC strongly supports including energy services in the GATS.

***In energy services, both market access and regulatory principles must be addressed.***

While there is no internationally agreed definition of energy services, the U.S. Energy Services Coalition (ESC) defines it as those services related to the exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management and efficiency of energy, energy products and fuels.

Energy services do not have a discrete classification under the current WTO Sectoral Classification List, although W/120 contains three classifications that are elements of energy services: services incidental to mining; energy distribution; and pipeline transport. W/120 needs to be broadened to include the full array of commercial activities by energy service providers, now and in the future.

Barriers to energy services fall into two major categories: limits on market access, and restrictive or discriminatory regulatory systems. Market access restrictions are similar to those faced by other service providers and include restrictions on the right of establishment, an inability to provide cross-border service, restrictions on allowing entrance to personnel and equipment, and restrictive government procurement practices.

Regulatory frameworks in the energy field are often opaque, discriminatory, arbitrary and simply confusing. The best way to ensure a meaningful liberalization of energy services would be the negotiation of a broad set of market access commitments in energy services, combined with a pro-competitive regulatory reference paper.

**4. Addressing GATS Mode 4** -- Of particular importance to developing countries is the movement of temporary persons (Mode 4) where concessions under the current agreement are limited. The NFTC believes an ambitious outcome to the Doha Agenda will require commitments on Mode 4. The NFTC further believes that this mode of delivery is important to global trade and firms doing business across borders in the 21<sup>st</sup> century. The realities of the global marketplace make temporary global workforce mobility a fact and necessity in today's economy. Just as businesses must move other assets around the world to respond to economic dynamics and remain globally competitive, businesses must compete for and dispatch intellectual and managerial talent around the world to stay competitive and grow. Such activities help start new enterprises, fill local skill shortages, undertake transnational joint ventures, cross-train international personnel, and the like.

*Twenty-five of the leading 40 global exporters of services are developing countries.*

The NFTC has issued a separate position paper on GATS Mode 4, with the following recommendations for the Doha Agenda:

- Eliminate unnecessary visa delays and expand and clarify the definition of permissible activities of business visitors.
- Maintain options for companies to operate flexible intracompany transferee programs and continue to offer pre-certification programs.
- Increase options for companies to retain high-demand professionals and ease restrictions for their dependents.
- Provide adequate resources for timely and consistent processing of applications.
- Develop effective mechanisms for transparency and communication between the government and companies.
- Provide adequate funding for efficient security clearance measures.

#### **D. AGRICULTURE: AN UNPRECEDENTED OPPORTUNITY FOR TRADE AND DEVOPMENT**

*According to the World Bank 96% of the world's farmers – approximately 1.3 billion people - live in developing countries.* The original Doha mandate and July 2004 Work Programme create

an unprecedented opportunity to liberalize global trade in agriculture in ways that will positively affect their livelihoods now and for the future. The NFTC urges all nations to put aside defensive strategies that focus on keeping domestic markets closed and instead take the offensive against the multitude of tariff and non-tariff barriers that keep poor nations poor and deny farmers in developed and developing countries a fair chance at market access.

This is a critical year when the hard choices must be made on how to achieve deep reductions in agricultural tariffs, substantially increase tariff rate quotas, and reduce and cap domestic supports that distort trade to any degree. For the vitally important issue of export subsidies where elimination will bring a new constructive dynamic to global trade in sugar and dairy among other agricultural products, the phase out must be comprehensive and soon.

The NFTC urges ambition with the full understanding of the domestic political difficulties facing the countries which take on this challenge. However, the benefits are too overwhelming to ignore. The World Bank estimates that developing countries could gain \$500 billion annually from global trade liberalization. This substantial prize for developing countries cannot be won without the full participation of developed and developing countries.

The agriculture modalities in the Work Programme remain to be fully defined. In keeping with the NFTC's call for an ambitious outcome we put forward the following recommendations.

### 1. Market Access

- **Tariffs** -- The legacy of the Uruguay Round is diverse often non-transparent tariff rates among countries and products that now make it difficult to find a formula that will achieve greater harmonization and ensure deep enough tariff cuts to create genuine market access.

*NFTC supports a low tariff rate on agriculture products by a date certain, covering all countries and all products.*

It is for this reason that the NFTC supports the approach of a low tariff rate ceiling on all agricultural products by a date certain. Product and country coverage should be comprehensive, with no exclusions. Special and differential treatment could be granted to developing countries with respect to the *timing* of phased tariff reductions but not with regard to the agreed *end-point tariff-ceiling rate*. Least developed countries should have the option to be exempt but should be provided technical assistance to participate if they choose since it has repeatedly been shown that lower tariffs support economic growth. The legacy of the Doha

Round should be transparency, simplicity, and the creation of a global agricultural marketplace that is driven by supply and demand, not by government intervention.

The NFTC urges WTO member countries to give regard to the following considerations when deciding on the specifics for liberalizing agriculture.

- ✚ ***Agricultural tariffs are essentially taxes on food.*** Developing country consumers, who often spend half their income on food, stand to gain from lower tariffs and lower food prices. The Food and Agriculture Organization estimates that more than 840 million people are chronically undernourished. Around 830 million of them live in developing countries.
- ✚ ***Low agricultural tariffs especially on basic foodstuffs*** such as cereals, rice, sugar, soy, dairy, meat, poultry, and oils will benefit consumers by lowering food costs but will also ***support domestic value added food processing sectors that create jobs and export revenue.***

- ✚ ***High duties create a high risk customs environment and encourage smuggling and black market activity particularly in developing countries where customs infrastructure is often under-resourced.*** The higher the duty, the higher the incentive for duty avoidance. Experience has shown that a reasonable rate of duty, e.g. 5-10%, will remove the incentive for smuggling, increase legitimate trade, and allow more revenue to actually reach the government.
- ✚ ***It is important to reduce agricultural tariffs, but also to eliminate the wide tariff differentials among agricultural commodities.*** Tariffs that protect one commodity significantly more than competing commodities distort production, consumption, and trade in the same way that subsidies that support one commodity out of proportion to competing commodities create distortions. If countries are serious about ending trade-distorting practices, extreme differences in commodity tariffs should not be overlooked nor should they be perpetuated through the use of “special or sensitive” product status.
- ✚ ***It is important for the trading community that dual tariff systems (applied and bound) be eliminated and that there be one unified, transparent and predictable tariff rate structure underpinning global agriculture trade.*** Bound rates were a political facilitation that allowed governments to have liberalization and high levels of protection at the same time. There are better methods in place and available to all countries in the WTO to protect against import surges. Bound tariffs are an anachronism that could now be set aside in favor of a single transparent, binding ad valorem tariff rate.

***NFTC urges member countries to seriously consider a final goal for agriculture of no applied or bound tariff higher than 15% in 10 years.*** This higher level of ambition warrants the longer phase-in period. It could be managed in two tranches: no tariff higher than 40% in 5 years; and no applied or bound tariff higher than 15% after year 10. The tiered structure for applying tariff reductions in both the Harbinson text and the July Framework could provide the mechanism for achieving this goal if the reduction percentages are sufficiently ambitious for the first and second tiers. We urge ambition because there are many examples around the world of excessively high tariffs that block trade and will continue to do so unless the percentages cuts are very substantial.

A few examples are of high tariffs are raw sugar currently at 194% in the U.S. and 242% in the E.U. Canada’s duty of 238% on poultry; Turkey’s duty of 225% on beef; Korea’s duty of 176% on milk powder; 150% on chocolate in India; 194% duty on yellow corn in Mexico, and 150% on rice in Nigeria. Different interim ceiling tariff targets and/or longer phase in periods could be one way of offering special and differential treatment to developing countries Another tool is a special safeguard mechanism for developing countries making deeper tariff cuts so that they have a form of insurance. Similarly, a minimal number of “special products” could be given more flexibility with a single cut to not more than 100% in the first year and then equal annual reductions over the remaining nine years. However, the end goal of a uniform ceiling tariff rate should be the same for all countries.

To ensure transparency and prevent circumvention of duty reduction objectives the NFTC strongly endorses: 1) conversion of all specific and compound duties to ad valorem; and 2) where tariff rate quotas exist the reductions in over quota tariffs should be made from external reference prices; e.g., published world prices, and not domestic import prices. This is especially important for commodities and is realistic since standardized global price data for commodities is readily available.



The NFTC calls attention to paragraph 43 of the July Work Program concerning Tropical Products and urges all WTO member countries to deliver on this commitment which dates back to the Uruguay Round. Full and early liberalization of global trade in all tropical products will directly benefit some of the most economically needy countries including those ravaged by the Tsunami in South Asia and the those countries in Africa and the Americas who struggle daily against disease and poverty.

• **Tariff Rate Quotas (TRQs)** -- Quantitative restrictions are among the most distorting of all trade management mechanisms. The Doha Round is an opportunity for their gradual elimination coordinated with tariff reductions. The interplay between expansion of TRQs and gradual tariff reductions that would apply to over quota tariff rates is a practical tool for assuring genuine market access. For example, those products subject to a TRQ and taking the maximum period of time to lower tariffs should be required to expand that product's TRQ to 20% of domestic consumption by year five. In-quota tariff rates for all TRQs should be zero from year one.

• **Special Safeguard Provisions** -- Article 5 of the Agreement on Agriculture - the special agricultural safeguard clause (SSG) - as applied to sugar, dairy, rice, peanuts, beef and a few other commodities – is a form of “special and differential treatment” in the Uruguay Round given to some developed countries that has perpetuated excessive levels of import protection. It is applied in addition to the over quota tariff on the select group of commodities mentioned above. In the case of sugar imported into the EU it is a permanent fixture of the tariff structure rather than a temporary safeguard. The NFTC urges the elimination of the *special safeguard clause* within five years of implementation. WTO members should rely on the Agreement on Safeguards when imports are found to threaten injury to domestic producers as defined by the Agreement.

*The NFTC urges the elimination of the special safeguard clause within five years of implementation.*

2. **Export Competition** -- The NFTC applauds the July framework agreement call for the elimination of all export subsidies by a date certain. This is a welcome and critical development. Few agriculture goals are more important to developing countries than the opportunity for fair competition in domestic and international markets. This means an end to the subsidization of agricultural exports by the developed world and a change in domestic support programs that promote over-production, which must then be “dumped” on the world market using export subsidies. In the example of sugar, the World Bank estimates that full multilateral liberalization of sugar including the elimination of export subsidies would increase the world price by an estimated 40% delivering increased revenue directly to developing countries and “offsetting about half of the quota rents for those countries with preferential access.”

Export subsidies are, in principle and in practice, damaging to developing countries and disruptive of international markets. According to World Development Indicators, “although around 70 percent of the world's poor live in rural areas and depend directly or indirectly on agriculture, two-thirds of the world's agricultural trade originates in OECD countries. Subsidies to producers in developed countries are the main factor responsible for this trade imbalance and, therefore, a problem that must be urgently tackled.” Their use should be discontinued in the shortest term possible by all countries without exception. Developing countries may be given additional time but the end result of subsidy elimination should be the uniform goal.

3. **Domestic Support** -- The NFTC recognizes the right of nations to preserve farm communities and to ensure that farmers earn a satisfactory income. But we urge countries to

achieve this goal without the use of market price support mechanisms and similar practices that distort production, consumption, and trade. The negotiations to restrict domestic farm subsidies are an opportunity as well as a challenge. Access to fast growing developing country markets is unlikely to be achieved by developed country exporters as long as domestic and export subsidies persist. The Doha Round is an opportunity for developed country governments to adjust course on domestic farm policy and in return win trade concessions that will benefit agriculture exporters but also the manufacturing and services sectors which represent 95% of global trade.

There is a clear parallel between cutting tariffs off the bound rates sufficient to achieve market access and cutting domestic support ceilings deeply enough to have an impact. The final formula for cutting domestic support, especially the amber, blue, and de minimus boxes, must achieve real results and to do that, reductions of 50-70% or more off Uruguay Round bindings will be necessary. Also important is to apply these reductions on a product specific basis to avoid the temptation to shift support measures from one box to another rather than reducing or eliminating them.

**4. Closing** -- The NFTC is concerned that the complexity of the decisions on negotiating modalities threatens to overwhelm the process and create an opaque, unmanageable result. We urge the WTO to guard against disenfranchising the global food producing and consuming public and leaving the negotiations vulnerable to narrow special interests. The NFTC urges ambition and a transparent and functional outcome that positions agricultural communities around the world for growth in response to market demand.

#### **E. A TRADE FACILITATION AGREEMENT IS CRITICAL TO THE OVERALL SUCCESS OF THE DOHA ROUND**

Trade facilitation is a key tool for all WTO Members in achieving market access. The NFTC urges the negotiation of an effective agreement on Trade Facilitation that provides transparency in border measures affecting the movement of goods, and ensures steady progress in the efficiency with which goods move across international boundaries. While negotiation of an effective trade facilitation agreement will benefit all traders, developing countries stand to make the greatest proportional gains, due to the substantial opportunities that exist to improve the efficiency of South-South trade. The NFTC supports providing effective technical assistance to developing countries to help modernize their customs regimes and implement transparent customs procedures. Finally, the NFTC recommends that WTO Members fully implement existing agreements in the customs area, particularly the Customs Valuation Agreement. These steps are critical to providing incentives for good governance and creating a level of certainty for traders.

**1. Benefits of Modernizing Customs Practices** – A successful agreement on Trade Facilitation rules is essential to delivering the increased market access that all member countries expect from the Doha Agenda negotiations. Increasing border efficiency and eliminating non-transparent practices would provide major economic benefits and help developing economies achieve their full economic potential. According to some studies, customs-related transaction costs – red tape – can account for up to 10% of a shipment’s value. These costs are further compounded by corruption and delay.

*Customs-related transaction costs can account for up to 10% or more of a shipment's value.*

Importantly, the benefits of an effective Trade Facilitation agreement would be felt acutely in the developing world. First, the absence of efficient border processes is an important inhibitor of



foreign direct investment in many developing countries. A key consideration for investment decisions today is the ability of the host country to provide an environment conducive to world class manufacturing that will serve both domestic and export markets. Logistics – the efficient movement of goods to and from a manufacturing facility – is critically important. It is here that customs administrations play a role in their nation’s attractiveness to foreign investors. Slow customs clearance and cargo release, complex documentation, non-transparent and discriminatory rules, and corruption are identified by investors as reasons to not invest in a country. All WTO Members, but especially developing countries, have an interest in removing customs-related disincentives by embracing trade facilitation reform.

Second, the absence of transparent and simplified rules-based customs procedures hinders development and the expansion of trade for much of the developing world. According to an APEC study, trade facilitation measures could generate 0.26% in real GDP gains and savings of 1-2% in import prices among developing countries in the APEC region. Regrettably, these problems are most prevalent in trade between and among developing countries. Adherence by developing countries to the existing WTO Agreements on Customs Valuation, Pre-shipment Inspection, and the Harmonized System protocol is critical. Building on those rules with an agreement on Trade Facilitation would achieve further major progress in building sound infrastructure as a foundation of economic growth and stability.

## **2. Specific Recommendations -- The objective of Trade Facilitation**

negotiations must be to achieve a transparent global trading system with steady improvement in the efficiency of movement of goods across international borders. Measures to improve transparency are well known and relatively inexpensive to implement. They include internet publication of all relevant laws and regulations; provision of advance notice of changes in laws and regulations, coupled with meaningful opportunities for traders to comment on proposals in advance of their adoption; the ability of traders to obtain advance, binding rulings on interpretations of laws and regulations; and the provision of administrative and judicial opportunities to protest adverse decisions by customs administrations.

***Trade Facilitation negotiations should result in a measurable reduction in time required for release of goods into the custody of the importer.***

The second essential element of meaningful Trade Facilitation is improvement of the efficiency of the movement of goods across national borders. Here the negotiating objective must be to achieve measurable improvement in reducing the time elapsed between the arrival of goods at the border and their release into the custody of the importer (“cycle time”), through a process in which each Member agrees to measure its system-wide cycle time, publish the result, and commit to improve cycle time progressively according to a designated schedule. The emphasis is on measurable improvement in facilitation, rather than uniformity of procedures or final result.

Cycle time has many advantages as a negotiating objective. First, it is measurable, using such accepted tools as the World Customs Organization’s Time Release Study, which recently has been transformed into an automated tool through the efforts of the World Bank and the Global Facilitation Partnership. Second, it accepts the status quo as the starting point for each WTO Member, thus avoiding unrealistic expectations and in essence building any need for special and differential treatment into the cycle time reduction commitment. Third, it allows each Member to choose its own means of achieving progress, adopting those measures best suited to achieve meaningful cycle time improvement within its own environment, both legal and procedural. Fourth, it avoids the danger of “phantom progress” – that is, the adoption of procedural objectives that do not result in meaningful improvement in the basic objectives of reducing cycle time. Fifth,

concentrating on cycle time rather than customs procedures embraces government agencies other than customs administrations within the scope of the negotiations without adding undue complication that would result from addressing the specific procedures used by all agencies affecting the transit of goods across border.

Specific practices embodied in such widely accepted instruments as the Kyoto Convention can form an important foundation for assessment of members' capabilities and opportunities for improvement. Procedures such as risk assessment, audit-based controls, automation, single window for traders, and the separation of control and release undoubtedly will be important elements of many Members' strategies to improve cycle time. As such, they will play an important part in the formulation of the capacity-building programs that will be critical to the overall success of any Trade Facilitation agreement. Some may well be of sufficiently universal importance to warrant specific obligations with the agreement. None, however, is a goal in itself; the success or failure of the Trade Facilitation agreement must lie in its measurable reduction of cycle time.

#### F. **E-COMMERCE – A KEY ECONOMIC DRIVER OF THE 21<sup>ST</sup> CENTURY**

E-commerce is a key economic driver of the 21st century and the WTO should ensure the global trading system is designed to enable e-commerce to thrive in the global marketplace. The NFTC supports the formal adoption by WTO Members of four guiding principles on the trade-related aspects of international e-commerce:

- Recognize that existing WTO Agreements, namely the GATT, GATS, and TRIPs apply to e-commerce.
- Ensure that electronically delivered products receive no less favorable treatment than like products delivered in physical form.
- Commit to refraining from creating new or discriminatory trade barriers to e-commerce.
- Agree to permanently not impose customs duties on electronic transmissions.

The NFTC encourages the WTO Work Programme on Electronic Commerce to enhance its dialogue while guiding and requesting meaningful commitments from countries in the areas of negotiations directly relating to electronic commerce.

#### G. **INTELLECTUAL PROPERTY RIGHTS SUPPORTS SOUND ECONOMIC DEVELOPMENT**

The NFTC believes that the Agreement on Trade-Related Intellectual Property Rights (TRIPs Agreement) is an essential component of an effective global trading system. It would be a serious step backwards if the TRIPs Agreement were weakened. We note that the obligations contained in the agreement, including those on effective enforcement, have not yet been fully implemented by many WTO Members. Full and effective implementation of the TRIPs Agreement is necessary for innovative and creative industries worldwide to reap the real commercial benefits that were contemplated by the TRIPs negotiators. For now, many elements of the TRIPs Agreement remain only promises.

*Intellectual property protection encourages innovation, investment and growth.*

The only TRIPs-related issue that is formally included in the Doha Agenda is a negotiation on geographical indications for wines and spirits already mandated by TRIPs Article 23(4) and

currently underway in the “Special Session” of the TRIPs Council. The NFTC believes that such a system should take the form of a data base of asserted geographical indications for wines and spirits, permitting each WTO Member to set forth its own approach to geographical indication protection while at the same time permitting global notification. Such a system would not significantly burden trademark owners or other interested parties.

The Ministers at Doha also instructed the TRIPs Council to address the issue of extending geographical indications protection beyond wines and spirits to other products, with a report due back to the Trade Negotiations Committee (TNC) by the end of 2002. The NFTC is very concerned about this exercise, since it could result in casting aside the principle of “first in time, first in right,” which is embodied in TRIPs Article 16(1) and which gives the owner of a registered trademark the exclusive right to prevent third parties from using identical or similar signs. Extending geographical indications to other products would force trademark owners to co-exist with a later geographical indication or, worse, to lose their rights altogether.

The NFTC supported the Doha Declaration on the TRIPs Agreement and Public Health and the work of the TRIPs Council to implement Paragraph 6 of the Doha Declaration regarding compulsory licensing of patented products for export in order to assist the most vulnerable patients in the poorest countries lacking manufacturing capacity for essential medicines through the August 30<sup>th</sup> WTO Decision (“Menon-Motta”). While some have argued that additional flexibilities need to be incorporated into the August 30<sup>th</sup> Agreement, the waiver and decision deserve time to work and should not be reopened. The focus should be on WTO Members working with generic firms to encourage them to step up their production of affordable HIV/AIDS, TB and Malaria medicines for developing country markets in need.

On the issue of Article 19 of the Doha Declaration, it is important to note that the TRIPs Council is carrying out a review of TRIPs Article 27.3(b), regarding the relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD). NFTC members believe that there is no conflict between the WTO TRIPs Agreement and the CBD, and remain concerned by calls to amend the TRIPs Agreement to introduce additional disclosure obligations relating to genetic resources. NFTC members support, and will work towards identification of, positive elements that could form the basis of a possible regime outside the scope of the TRIPs Agreement that would support the objectives of the CBD without encumbering the patents and other legitimate intellectual property (IP) rights required to generate benefits to be shared between genetic resource providers and users.

The NFTC strongly encourages the WTO to ensure that effective technical assistance is being provided to developing economies on the TRIPs Agreement. Such assistance should create improved understanding of the importance of the TRIPs Agreement to a country’s ability to develop economically, as well as improving enforcement of the Agreement in developing countries.

#### **H. COMMON SENSE APPROACHES TO IMPROVE AND CLARIFY RULES**

*From 1995 to mid-2001, about 60% of all anti-dumping measures were imposed by developing countries.*

**1. Antidumping** -- A notable phenomenon since the conclusion of the Uruguay Round has been the growing use of antidumping (AD) measures by WTO members, particularly developing countries. According to recent WTO reports, some 65 countries have notified the WTO of their AD laws. Not only are these laws now in place in many more countries today than when the Uruguay Round was negotiated, but these laws are often applied to American exports, particularly in

developing country markets. India, for example is the second largest user of AD laws, with 140 cases during 1995-2000. Other active new users of AD measures include China, which has launched 34 AD cases since 1997.

The NFTC is concerned about the lack of due process and transparency by new users of AD regimes. For example, in some countries, the laws are simply on the books without any administrative office or capacity to implement the requirements of WTO antidumping rules. In other countries, there is little or no due process. There are instances, for example, in which American companies subject to an AD complaint did not even receive notification of the investigation until after the comment period had expired. Another more troubling concern is that some WTO Members do not adhere to the causality link requiring proof that dumping caused injury or to the requirement of a fair comparison. In these and other instances, WTO rules are not being followed, and AD measures are simply being used as protectionist measures. The NFTC believes these issues should be a primary focus of the Doha negotiations on antidumping rules. The NFTC recognizes that the AD negotiation will entail a discussion of the U.S. antidumping regime and supports that process based on the ministerial mandate.

The NFTC supports the Doha mandate to clarify and improve antidumping disciplines and issued a detailed position paper on this topic in March 2003. The paper recommended that WTO Members simplify and streamline the AD Agreement and establish an Experts Group process for creating model instruments and improving the capacity of developing countries to implement their WTO commitments on antidumping rules.

The current AD text is unwieldy, internally inconsistent and in need of serious reform for the good of the WTO system and U.S. public support for that system as a whole. Starting from a clean slate, the NFTC recommends that WTO Members negotiate a new agreement that focuses on core principles of antidumping law and practice, such as transparency, due process, independence of decision-makers, fair comparisons and judicial review. An Experts Group process under the aegis of the WTO would encourage uniformity of practices by developing model regulations and other instruments and by encouraging voluntary adherence to them under a safe harbor provision. Other provisions would include recognition that antidumping is a legitimate instrument of trade policy, fast-track access to WTO dispute resolution in response to significant procedural violations and effective national judicial review of decisions.

**2. Subsidies and Countervailing Measures** -- The NFTC views the negotiation on subsidies and countervailing duty measures (SCMs) as a critical opportunity to eliminate trade-distorting and environmentally harmful fishery subsidies and to a potential sectoral agreement governing the use of steel subsidies. The NFTC is concerned that some European states will attempt to weaken the disciplines achieved in the Uruguay Round that limit government subsidies to the aerospace sector and urges WTO Members to maintain vigorous and effective disciplines on subsidies practices with respect to civil aircraft products under the SCM Agreement.

***NFTC recognizes that the anti-dumping negotiation must entail a discussion of the U.S. regime as well.***

• **Fishery Subsidies:** The NFTC endorses the elimination of harmful fishery subsidies, which, according to some reports, amount to \$28 billion in government funding on an annual basis. Eliminating these subsidies would demonstrate clearly how the elimination of trade distortions can be mutually supportive of the environment.

● **Steel Subsidies:** The SCM negotiations may create an important opportunity to address the issue of overcapacity of steel production and government subsidies. Because the subsidization of the steel sector globally has distorted steel trade and caused problems for the smooth functioning of the multilateral trading system, WTO Members should consider a sectoral approach to discipline steel subsidies. This suggests the possibility of bringing the current OECD discussions in this area under the WTO negotiations on subsidies.

● **OECD Disciplines on Export Finance Subsidies:** The NFTC recommends that the United States and other WTO Members not weaken the existing OECD Arrangement governing the use of official export credits. Participating countries in the Arrangement are net providers (i.e., creditors) of official export credits. They seek to reduce government subsidies in the field of official export credits and also seek to encourage competition among exporters on commercial terms, rather than on trade-distorting officially supported terms. The NFTC notes that the SCM Agreement acknowledges the Arrangement’s disciplines under Item k to Annex 1 (Illustrative List of Export Subsidies). The NFTC supports revising the fourth line of the second paragraph of Item k to Annex 1 to state “applies the provisions of” instead of “applies to the interest rate provisions of” to rectify the recent confusion over the relationship of the Arrangement to WTO rules.

The NFTC strongly opposes any weakening of these OECD Arrangement disciplines in the WTO SCM Agreement, as has been proposed by certain developing countries. Should this issue be addressed in the context of the WTO subsidies discussion, the focus should be on the need to eliminate completely official export credits, particularly for buyers in investment grade countries where adequate market-based financing is available. Additionally, any WTO discussion of these issues should also address the need for disciplines on the growing phenomenon of “market windows,” an undisciplined form of official export credit support that lacks transparency and leads to trade distortions. Finally, any discussions should also examine the benefits of developing countries becoming participants in the OECD Arrangement for disciplining export finance credits.

### **3. Regional Trade Agreements -- The NFTC**

views the proliferation of bilateral and regional trade agreements as a major challenge to the smooth functioning of the multilateral trading system. Although such agreements can serve as a catalyst toward free trade, they also threaten an ever-more complex web of differing rules of origin and distortions of economic comparative advantage. We believe the spread of such agreements is one compelling reason why the WTO must seek global zero tariffs. The NFTC has long urged the WTO to be much more effective in policing the numerous RTAs to ensure they meet existing GATT Article XXIV requirements. Many RTAs do not, in fact, cover “substantially all trade,” as required by the WTO. And the web of differing rules of origin and tariff schedules creates a challenge particularly for developing economies (especially those that are left outside of major RTAs) and small businesses that find it difficult to comply with a growing number of tariff rates and rules.

*The spread of regional trade agreements may leave poor countries behind.*

*Because no MEA has ever been the subject of a WTO case, it is not clear that an Article XX clarification is needed.*

At the very least, as the recent Sutherland Report recommends, the Article XXIV disciplines should be strengthened.

**4. Trade and Environment** – In line with the mandate of the Doha Ministerial Declaration, the NFTC recommends that the primary focus of negotiations on trade and the environment be in two areas where



“win-win” benefits are possible: the elimination of fishery subsidies and the reduction and elimination of trade barriers to environmental goods and services. Talks on fishery subsidies offer the opportunity to eliminate trade-distorting subsidies that are harmful to the environment because they encourage over-fishing. A similar win-win scenario exists in agricultural subsidies and environmental goods and services. Eliminating barrier to trade in environmental goods, for example, will promote their greater use.

The NFTC also endorses an effort to ensure regular information exchange between Multilateral Environmental Agreement (MEA) Secretariats and the relevant WTO committees. This will promote better understanding of the ways in which trade liberalization and environmental protection can be mutually supportive, including the various WTO rules and agreements, which explicitly recognize the importance of environmental concerns.

A fourth area of the negotiation relates to the relationship between existing WTO rules and specific trade obligations set out in MEAs. We note that this negotiation is not aimed at addressing non-parties to MEAs. The fact that an MEA has never been the subject of a WTO dispute settlement process suggests there is no need to re-open WTO rules under Article XX. Should WTO Members believe a clarification of Article XX is warranted, the NFTC recommends that such clarification involve a criteria-based approach with regard to the MEA itself and with regard to the trade measures used for its enforcement. These criteria should include, among other provisions, that the MEA be based on sound science, be open to all parties, and include a majority of the countries which account for a substantial portion of the activities addressed by the agreement or which are affected by it. The criteria for an MEA trade measure should include that the trade measure be explicitly identified in the MEA and adopt basic proportionality guidelines in key WTO agreements, including adherence to least trade restrictive criteria.

With respect to the future work program under the Committee on Trade and Environment, particularly on labeling and TRIPs, the NFTC urges that such work be conducted in close coordination with the Committee on Technical Barriers and the TRIPs Council. An overriding principle in these discussions should be to avoid undermining the relevant provisions of these agreements. Above all, these discussions should not be a back door mechanism for weakening basic WTO rules and principles.

## **I. DISPUTE SETTLEMENT**

The WTO Dispute Settlement Understanding (DSU) has, on balance, operated well in resolving disputes and plays a vital role in ensuring WTO obligations are implemented. The Doha Agenda presents an important opportunity to achieve for limited changes to improve DSU rules.



### ***NFTC Recommendations on Dispute Settlement***

- 1. Implement by May 2003 the package of initial DSU reforms agreed at Seattle.***
- 2. Undertake a fuller review of the DSU, to include examination of the following:***
  - A system of permanent panelists;***
  - Reducing timeframe for dispute settlement cases;***
  - Allowing the filing of amicus briefs without increasing the costs of litigation;***
  - Opening hearings to public observation;***
  - Lending greater weight to compensation over retaliation, in cases of non-compliance.***

The NFTC recommends a two-track approach on dispute settlement. The first track would be to adopt, by May 2003, the package of practical reforms that were agreed to by all WTO Members at the Seattle Ministerial. The second track would be to examine more recent issues regarding the functioning of the DSU with the goal additional reforms by the end of the Doha Agenda negotiations. Among the issues to explore would be creating a professional panelist system, changes in DSU timeframes, potential changes to the provisions on retaliation and compensation, allowing the filing of amicus briefs, and opening the hearing process to the public.

The NFTC is concerned about the frequent use of the dispute settlement mechanism as a first choice rather than a last choice in settling disputes. Alternative approaches to retaliation should be examined, including whether to place greater emphasis on compensation-based or other solutions to disputes.

Experience with the dispute settlement process since 1995 demonstrates that the system works reasonably well where traditional trade issues or well-established doctrines are involved. However, where the WTO is asked to interpret unclear or untested provisions, or where it is forced to delve into complex areas outside of trade (i.e., direct taxes or measures to avoid double taxation), the absence of an ongoing process to clarify rules without resorting to dispute panels, can lead to bad decisions and bad results. This outcome is further exacerbated by the WTO lacking a meaningful process for promoting settlement rather than litigation of cases to their ultimate conclusion.

### **III. CONCLUSION**

As the WTO enters its tenth year of existence and builds on the GATT of more than five decades ago, the vision of an ambitious and successful outcome to the Doha Development Agenda is within reach if WTO Members exert the necessary political will and leadership. It is a vision of enormous economic promise and development through a higher level of openness and multilateral commitment to expanding global economic engagement. The vision is there, now is the time to seize it.









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National Foreign Trade Council, Inc.  
1625 K Street, N.W. Washington D.C. 20006-1604  
Tel: (202) 887-0278 Fax: (202) 452-8160  
[www.nftc.org](http://www.nftc.org)